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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 13307/2024

M/S HOTSAFE INTERNATIONALPetitioner

Through: Mr. Pranay Jain & Mr. Karan
Singh, Advs.

versus

PRINCIPAL COMMISSIONER OF GOODS

AND SERVICE TAX NORTH DELHIRespondent

Through: Mr. Shashank Sharma, SSC.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

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15.10.2024

1. This writ petition has been preferred seeking the following reliefs:

“a) issue a writ of mandamus or any other appropriate writ or direction to directing respondent to restore the GST registration of the petitioner.

b) issue a writ of certiorari or any other appropriate writ or direction to quash and set aside the SCN dated 03.06.2023 and the order dated 20.06.2023 issued by the respondent cancelling the registration of the petitioner;

c) issue a writ of certiorari or any other appropriate writ or direction to cancel the GST registration of the petitioner from the date of the Show Cause notice dated 03.06.2023;

c) issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in the aforesaid facts and circumstances of the case.

d) Also pass any other further order or direction in the facts and circumstances of the present petition.”

2. The petitioner is principally aggrieved by the order dated 20 June 2023 pursuant to which its registration under the **Central Goods**



and Services Tax Act, 2017¹ has come to be cancelled with retrospective effect from 29 August 2018.

3. Although we had granted time to the respondents to file a reply, since no response has been filed, and bearing in mind the state of the record as it exists today, we find no justification to defer the disposal of the present writ petition.

4. The writ petition discloses that the order of cancellation impugned herein was preceded by the issuance of a **Show Cause Notice²** dated 03 June 2023 and which is extracted hereinbelow:

“Show Cause Notice for Cancellation of Registration

Whereas on the basis of information which has come to my notice, it appears that your registration is liable to be cancelled for the following reasons:

i. Section 29(2)(e)-registration obtained by means of fraud, wilful misstatement or suppression of facts you are hereby directed to furnish a reply to the notice within seven working days from the date of service of this notice.

You are hereby directed to appear before the undersigned on 09/06/2023 at 11:55 A.M

If you fail to furnish a reply within the stipulated date or fail to appear for personal hearing on the appointed date and time, the case will be decided ex parte on the basis of available records and on merits.

Please note that your registration stands suspended with effect from 03/06/2023.”

5. As is manifest from the above, the allegation as levelled against the writ petitioner was of it having obtained registration by means of “*fraud, wilful misstatement or suppression of facts*”. As is ex facie evident from a reading of the SCN apart from these allegations, there was no material or evidence to support the charge which stood laid.

6. Although learned counsel for the respondents submit that the

¹ Act

² SCN



aforesaid SCN was accompanied by a communication received from the Office of the Principal Commissioner, **Goods & Services Tax**³, we find that even that would not come to the rescue of the respondents for the following reasons.

7. As is well settled, “fraud”, “wilful misstatement” or “suppression of facts” have a well-known connotation in law. The notice is clearly unreasoned and fails to allude to any material which may have weighed and been taken into consideration by the respondents for the purposes of laying that charge.

8. Even if the communication of the Principal Commissioner, GST were to be taken into account, and which alluded to the business premises having been found to be non-functional on the date of inspection, the same in itself would have not constituted sufficient material to sustain a charge of fraud, wilful misstatement or suppression of facts since that would have had to necessarily allude to circumstances which existed at the time when the writ petitioner had applied for registration.

9. More importantly we note that the original SCN had not even alluded to an intent to cancel registration with retrospective effect from 29 August 2018.

10. We note that while dealing with this aspect we had in **Riddhi Siddhi Enterprises vs. Commissioner of Goods and Services Tax (CGST), South Delhi & Anr.**⁴ held as follows:

“5. As is manifest from a reading of Section 29, clauses (a) to (e) of Section 29(2) constitute independent limbs on the basis of which a registration may warrant cancellation. While the provision does enable the respondents to cancel that registration with retrospective effect, the mere existence or conferral of that power would not

³ GST

⁴ W.P.(C) 8061/2024 decided on 25 September 2024



justify a revocation of registration. The order under Section 29(2) must itself reflect the reasons which may have weighed upon the respondents to cancel registration with retrospective effect. Given the deleterious consequences which would ensue and accompany a retroactive cancellation makes it all the more vital that the order be reasoned and demonstrative of due application of mind. It is also necessary to observe that the mere existence of such a power would not in itself be sufficient to sustain its invocation. What we seek to emphasise is that the power to cancel retrospectively can neither be robotic nor routinely applied unless circumstances so warrant. When tested on the aforesaid precepts it becomes ex facie evident that the impugned order of cancellation cannot be sustained.

6. We note that while dealing with the right of the respondents to cancel GST registration with retrospective effect and the manner in which such power should be exercised in accordance with the statutory scheme was an issue which was noticed in **Ramesh Chander vs Assistant Commissioner of Goods and Services Tax, Dwarka Division, CGST Delhi & Anr.**⁴ The Court in Ramesh Chander taking note of the contours of Section 29 had held:-

“1. The petitioner impugns order in appeal dated 29.12.2023, whereby the appeal filed by the petitioner has been dismissed solely on the ground of limitation. Petitioner had filed the appeal impugning order dated 13.07.2022 whereby the GST registration of the petitioner was cancelled retrospectively with effect from 01.07.2017. Petitioner also impugns Show Cause Notice dated 07.04.2022.

2. Vide impugned Show Cause Notice dated 07.04.2022, petitioner was called upon to show cause as to why the registration be not cancelled for the following reasons:-

“Any Taxpayer other than composition taxpayer has not filed returns for a continuous period of six months”

3. Petitioner was in the business of services involving repair, alterations, additions, replacements, renovation, maintenance or remodelling of the building covered above, General construction services of harbours, waterways, dams, water mains and lines, irrigation and other waterworks, General construction services of long-distance underground/ overland/ submarine pipelines, communication and electric power lines (cables); pumping stations and related works; transformer stations and related works, General construction services of local water & sewage pipelines, electricity and communication cables & related works, Installation, assembly and erection services of other prefabricated structures and constructions and



possessed a GST registration.

4. A show cause notice was issued to the petitioner on 07.04.2022. Though the notice does not specify any cogent reason, there is an observation in the notice stating failure to furnish returns for a continuous period of six months. The show cause notice requires the petitioner to appear before the undersigned i.e. authority issuing the notice. Notice does not give the name of the officer or place or time where the petitioner has to appear.

5. Further the order dated 13.07.2022 passed on the show cause notice does not give any reasons for cancellation of the registration. It, however, states that the registration is liable to be cancelled for the following reason "whereas no reply to notice to show cause has been submitted". However, the said order in itself is contradictory, the order states "reference to your reply dated 16.04.2022 in response to the notice to show cause dated 07.04.2022" and the reason stated for cancellation is "whereas no reply to notice to show cause has been submitted". The order further states that effective date of cancellation of registration is 01.07.2017 i.e. retrospective date.

6. Neither the show cause notice, nor the order spell out the reasons for retrospective cancellation. In fact, in our view, order dated 13.07.2022 does not qualify as an order of cancellation of registration.

7. As per the petitioner, the said order reflected that the GST of the Petitioner stands cancelled from 01.07.2017 even though returns thereafter have been filed by the Petitioner.

8. We notice that the show cause notice as well as the impugned order of cancellation, are themselves vitiated on account of lack of reason and clarity. The appeal has been dismissed solely on the ground of limitation. Since the very foundation of entire proceedings i.e. show cause notice and the order of cancellation are vitiated, we are of the view that no purpose would be served in relegating the petitioner to the stage of an appeal.

9. In terms of Section 29(2) of the Central Goods and Services Tax Act, 2017, the proper officer may cancel the GST registration of a person from such date including any retrospective date, as he may deem fit if the circumstances set out in the said sub-section are satisfied. The registration cannot be cancelled with retrospective effect mechanically. It can be cancelled only if the proper officer deems it fit to do so. Such satisfaction cannot be subjective but must be based on some objective criteria. Merely, because a taxpayer has not filed the returns for some period does not mean that the taxpayer's



registration is required to be cancelled with retrospective date also covering the period when the returns were filed and the taxpayer was compliant. 10. It is important to note that, according to the respondent, one of the consequences for cancelling a tax payer's registration with retrospective effect is that the taxpayer's customers are denied the input tax credit availed in respect of the supplies made by the tax payer during such period. Although, we do not consider it apposite to examine this aspect but assuming that the respondent's contention in this regard is correct, it would follow that the proper officer is also required to consider this aspect while passing any order for cancellation of GST registration with retrospective effect. Thus, a taxpayer's registration can be cancelled with retrospective effect only where such consequences are intended and are warranted.

11. The show cause notice does not even state that the registration is liable to be cancelled from a retrospective date.

12. The petition is allowed. The impugned show cause notice dated 07.04.2022, order of cancellation dated 13.07.2022 and the order in appeal dated 29.12.2023 are accordingly set aside. GST registration of the petitioner is restored, subject to petitioner filing requisite returns upto date.

13. It is clarified that since the petitioner could not have filed the return after the GST registration was suspended, there shall be no liability to pay any penalty or fine for delayed filing. However, this would only apply in case petitioner files an affidavit of undertaking that petitioner has not carried out any business or raised invoices or taken any Input Tax Credit after the registration was suspended with effect from 07.04.2022 i.e., the date of suspension of the registration.

14. Respondent would be at liberty to initiate appropriate proceedings in accordance with law after giving a proper show cause notice containing complete details, if so advised. Further this order would not preclude the respondent from initiating any steps in accordance with law, if it is found that the petitioner had violated any provisions of the Act.

15. Petition is disposed of in the above terms."

7. We further take note of the judgment in **Delhi Polymers vs Commissioner, Trade and Taxes & Anr.**⁵ wherein the following was observed:-

"1. Petitioner has filed the appeal impugning order of cancellation of registration dated 15.12.2021 whereby the GST registration of the Petitioner has been cancelled retrospectively with effect from 01.07.2017. Petitioner also impugns Show



Cause Notice dated 04.09.2021.

2. Vide Show Cause Notice dated 04.09.2021, petitioner was called upon to show cause as to why the registration be not cancelled for the following reason:-

“Collects any amount representing the tax but fails to pay the same to the account of the Central/State Government beyond a period of three months from the date on which such payment becomes due”

3. Petitioner was engaged in the business of Sanitary ware Products & Accessories i.e., Baths, Shower, Washbasins, Seats and Cover etc. and possessed GST registration.

4. Show Cause Notice dated 04.09.2021 was issued to the Petitioner seeking to cancel its registration. However, the Show Cause Notice also does not put the petitioner to notice that the registration is liable to be cancelled retrospectively. Accordingly, the petitioner had no opportunity to even object to the retrospective cancellation of the registration.

5. Further, the impugned order dated 15.12.2021 passed on the Show Cause Notice dated 04.09.2021 does not give any reasons for cancellation. It, however, states that the registration is liable to be cancelled for the following reason “whereas no reply to the show cause notice has been submitted”. However, the said order in itself is contradictory. The order states “reference to your reply dated 15.12.2021 in response to the notice to show cause dated 04.09.2021” and the reason stated for the cancellation is “whereas no reply to notice show cause has been submitted”. The order further states that effective date of cancellation of registration is 01.07.2017 i.e., a retrospective date.

6. Neither the show cause notice, nor the order spell out the reasons for retrospective cancellation. In fact, in our view, order dated 15.12.2021 does not qualify as an order of cancellation of registration. On one hand, it states that the registration is liable to be cancelled and on the other, in the column at the bottom there are no dues stated to be due against the petitioner and the table shows nil demand.

7. Learned Counsel for the Petitioner submits that the said order reflected that the GST registration of petitioner stands cancelled from 01.07.2017 even though returns thereafter have been filed by the Petitioner.

8. He further submits that the petitioner is no longer interested in continuing the business and the business has been discontinued.

9. In terms of Section 29(2) of the Act, the proper officer may



cancel the GST registration of a person from such date including any retrospective date, as he may deem fit if the circumstances set out in the said sub-section are satisfied. Registration cannot be cancelled with retrospective effect mechanically. It can be cancelled only if the proper officer deems it fit to do so. Such satisfaction cannot be subjective but must be based on some objective criteria. Merely, because a taxpayer has not filed the returns for some period does not mean that the taxpayer's registration is required to be cancelled with retrospective date also covering the period when the returns were filed and the taxpayer was compliant.

10. It is important to note that, according to the respondent, one of the consequences for cancelling a tax payer's registration with retrospective effect is that the taxpayer's customers are denied the input tax credit availed in respect of the supplies made by the tax payer during such period. Although, we do not consider it apposite to examine this aspect but assuming that the respondent's contention is required to consider this aspect while passing any order for cancellation of GST registration with retrospective effect. Thus, a taxpayer's registration can be cancelled with retrospective effect only where such consequences are intended and are warranted.

11. It may be further noted that both the Petitioners and the department want cancellation of the GST registration of the Petitioner, though for a different reason.

12. In view of the fact that Petitioner does not seek to carry on business or continue the registration, the impugned order dated 15.12.2021 is modified to the limited extent that registration shall now be treated as cancelled with effect from 04.09.2021 i.e., the date when the Show Cause Notice was issued.

13. It is clarified that Respondents are also not precluded from taking any steps for recovery of any tax, penalty or interest that may be due in respect of the subject firm in accordance with law.

14. Petition is accordingly disposed of in the above terms."

8. In view of the aforesaid and in light of an abject failure on the part of the authority to assign even rudimentary reasons for a retroactive cancellation, we find ourselves unable to sustain the order impugned."

We thus find ourselves unable to sustain the order impugned.

11. The writ petition is, accordingly, allowed. The impugned order dated 20 June 2023 is hereby quashed and set aside. This order,



however, shall be without prejudice to the right of the respondents to draw proceedings afresh and in accordance with law.

12. All rights and contentions of respective parties, in such an eventuality, are kept open.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

OCTOBER 15, 2024/kk